

TRADE SHOW NETWORK, INC., )  
 )  
 Plaintiff/Appellee, )  
 )  
 VS. )  
 )  
 TANNER & ASSOCIATES AND )  
 MIKE TANNER, individually, )  
 )  
 Defendants/Appellants. )

Appeal No.  
01-A-01-9612-CV-00563

Williamson Circuit  
No. 96233

**FILED**  
  
May 23, 1997  
  
Cecil W. Crowson  
Appellate Court Clerk

COURT OF APPEALS OF TENNESSEE  
MIDDLE SECTION AT NASHVILLE

APPEALED FROM THE CIRCUIT COURT OF WILLIAMSON COUNTY  
AT FRANKLIN, TENNESSEE

THE HONORABLE HENRY DENMARK BELL, JUDGE

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AFFIRMED IN PART; REVERSED IN PART:  
AND REMANDED

BEN H. CANTRELL, JUDGE

CONCUR:  
LEWIS, J.  
KOCH, J.

## OPINION

In this action to domesticate a Georgia judgment, the trial judge refused to consider the judgment debtor's answer and counterclaim because they were filed late. We hold that under the circumstances of this case the judgment debtor should have been allowed to file the answer and counterclaim, but that the answer did not raise any defense to the foreign judgment. Therefore, we affirm the order domesticating the Georgia judgment and remand the cause for consideration of the counterclaim.

### II.

Trade Show Network, Inc. (TSN) obtained a judgment against Tanner & Associates and Mike Tanner individually in the Superior Court of Cobb County, Georgia on June 1, 1994. On April 8, 1996 TSN filed a petition in the Circuit Court of Williamson County to domesticate the Georgia judgment. Tanner's lawyer had his secretary call the lawyer for TSN to obtain an extension of time to file a responsive pleading. The secretary failed to reach TSN's lawyer but presented her request to the lawyer's secretary. Although the exact nature of the conversation is in dispute, Tanner's lawyer came away with the impression that unless he heard to the contrary he could have an additional thirty days within which to file his response. Apparently the conversation between the secretaries did not reach the plaintiff's lawyer, because on May 31, 1996 the trial court entered an order reciting that no response had been received within thirty days. The court domesticated the Georgia judgment and granted the plaintiff the right to run an execution.

On June 4, 1996 Tanner filed a motion for an extension of time to file responsive pleadings. He attached the affidavit of the lawyer's secretary and his

proposed answer and counterclaim. The answer asserted that the Georgia judgment was unenforceable because of the plaintiff's fraud and conduct amounting to an estoppel. The counterclaim asserts that TSN was indebted to Tanner on theories of contract, conversion, deceit, and violation of the Racketeer Influenced and Corrupt Organizations Act.

The counterclaim also contained the facts that allegedly made the Georgia judgment unenforceable. The paragraph detailing these facts states:

7. The Counter-defendant's bill for labor and supplies regarding the Wonderwear show included charges for labor that was not performed, charges for people who did not work on the project, inflated charges for supplies and inflated rates for workers. Counter-defendant has admitted to Mr. Tanner that this bill was "padded" because Counter-defendant wanted more profit on its work in Chicago for Mr. Tanner and Wonderwear. These fraudulent charges grossly inflated the bill for services rendered and supplies furnished by counter-defendant. These acts of fraud, which included double and triple charges for supplies and labor, constitute a complete bar to Counter-defendant's petition for Domestication of Foreign Judgment under the doctrine of fraud, estoppel, payment and setoff.

The court treated the motion as a Rule 60.02 motion to set aside a final judgment but concluded that it was not well taken. Tanner then moved to alter or amend and the court also overruled that motion.

## II.

First, we conclude that Tanner's lawyer made a reasonable assumption that unless he heard to the contrary his responsive pleadings would not be required for another thirty days. Therefore, we will treat the answer and counterclaim as if they were timely filed.

However, taken together they do not state a defense to the Georgia judgment. The defenses allowed under our uniform statute include an appeal or a stay of the foreign judgment, Tenn. Code Ann. § 26-6-106, and we have recognized other defenses that would deprive the foreign judgment of the right to full faith and credit. *Biogen Distributors, Inc. v. Tanner*, 842 S.W.2d 253 (Tenn. App. 1992). The only facts stated in the answer and counterclaim as defenses to the Georgia judgment amount to an assertion that the plaintiff in that action presented an unjust claim to the court. That is a defense based on the facts, and it should have been presented to the Georgia court. Such factual issues may not be retried here. *Benham v. Fisher*, 650 S.W.2d 759 (Tenn. App. 1983). Therefore, the lower court's judgment on the issue of the foreign judgment is affirmed.

### III.

We are, however, of the opinion that the judgment debtors should have been allowed to file their counterclaim. Our rules of procedure allow permissive counterclaims, which may include matters unrelated to the claim on which the suit is brought. Rule 13.02, Tenn. R. Civ. Proc. The only question in this case is whether it is appropriate to file a counterclaim in a case where the original proceeding is for the enforcement of a foreign judgment. No reason occurs to us why not, and the parties have not cited any authority suggesting that it would be a bad idea.

TSN argues that the counterclaim is barred by res judicata because it involves matters that should have been raised as a compulsory counterclaim in the Georgia proceeding. That is an issue that the trial court must sort out on remand and we take no position on it whatsoever.

The lower court's order making the Georgia judgment a Tennessee judgment is affirmed and TSN shall be allowed to execute on the judgment unless

stayed by the trial court. The part of the lower court's order dismissing the counterclaim is reversed and the cause is remanded to the Circuit Court of Williamson County for further proceedings. Tax the costs on appeal one-half to the appellants and one-half to the appellee.

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BEN H. CANTRELL, JUDGE

CONCUR:

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SAMUEL L. LEWIS, JUDGE

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WILLIAM C. KOCH, JR., JUDGE

